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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,584	10/26/2001	Stephen A. Thomas	08286.105010	9377
20786	7590	08/09/2005	EXAMINER	
KING & SPALDING LLP 191 PEACHTREE STREET, N.E. 45TH FLOOR ATLANTA, GA 30303-1763			FOX, JAMAL A	
			ART UNIT	PAPER NUMBER
			2664	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/045,584

Applicant(s)

THOMAS ET AL.

Examiner

Jamal A. Fox

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 and 22 is/are allowed.
- 6) ☒ Claim(s) 13-18, 20 and 21 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/24/03 & 11/8/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 13-18, 20 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoebeke (U.S. Patent No. 6,424,656).

Referring to claim 13, Hoebeke discloses a method for processing upstream packets of an optical network, comprising the steps of:

for a group (group, col. 3 lines 45-56) of subscribers in the optical network,
receiving a request (request, col. 3 lines 50-55) from a subscriber to transmit one or more upstream packets;
determining (determined, col. 3 lines 50-55) whether the one or more upstream packets can be processed;

sending (transmitted, col. 3 lines 56-65) a message to the subscriber indicating whether the one or more upstream packet can be processed; and

receiving (received, col. 3 lines 60-65) the upstream packets if it is determined that the one or more upstream packets can be processed.

Referring to claim 14, Hoebeke discloses the method of claim 13, wherein the step of determining whether the upstream packets can be processed further comprises the step of calculating available upstream bandwidth with a token bucket algorithm (algorithm, col. 9 lines 11-28, col. 11 line 50-col. 12 line 14 and col. 12 lines 55-60).

Referring to claim 15, Hoebeke discloses the method of claim 13, wherein the step of determining whether upstream packets (upstream packet, col. 1 lines 35-40) can be processed further comprises the step of calculating available upstream bandwidth (bandwidth, col. 1 lines 35-40 and col. 1 lines 45-50) based upon what other upstream packets (upstream packet, col. 1 lines 35-40) other subscribers are planning to transmit.

Referring to claim 16, Hoebeke discloses the method of claim 13, wherein the step of determining whether upstream packets (upstream packet, col. 1 lines 35-40) can be processed further comprises the step of determining an upstream bandwidth (bandwidth, col. 1 lines 35-40 and col. 1 lines 45-50) subscription service level of a subscriber.

Referring to claim 17, Hoebeke discloses the method of claim 13, wherein the step of determining whether upstream packets (upstream packet, col. 1 lines 35-40) can be processed further comprises the step of calculating available bandwidth (bandwidth,

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col. 1 lines 35-40 and col. 1 lines 45-50) based upon a total upstream data traffic load that is destined for the data service hub (central station, col. 1 lines 40-50).

Referring to claim 18, Hoebeke discloses the method of claim 13, wherein the step of sending a message (message, col. 3 line 38-col. 4 line 3) further comprises the step of sending a message (message, col. 3 line 38-col. 4 line 3) indicating an amount of packets that can be transmitted upstream (upstream, col. 3 line 38-col. 4 line 3) by a subscriber.

Referring to claim 20, Hoebeke discloses the method of claim 13, further comprising the step of allocating bandwidth between subscriber optical interfaces according to a weighted max (peak, col. 11 line 1-col. 12 line 32) – min (minimum, col. 11 line 1 - col. 12 line 32) mathematical algorithm (algorithm, col. 11 line 1 – col. 12 line 32).

Referring to claim 21, Hoebeke discloses the computer-readable medium (medium, col. 1 lines 10-15, col. 2 lines 5-10 and col. 5 lines 10-25) having computer-executable instructions for performing the steps recited in claim 13.

Allowable Subject Matter

3. Claims 1-12 and 22 are allowed.
4. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(571) 273-8300, (for formal communications intended for entry)

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamal A. Fox whose telephone number is (571) 272-3143. The examiner can normally be reached on Monday-Friday 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to 2600 Customer Service whose telephone number is (571) 272-2600.



Jamal A. Fox



WELLINGTON CHIN
TRIMISORY PATENT EXAMINER